IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
April 22, 2009 Session

STATE OF TENNESSEE v. PATRICIA ANN PLASKET

Appeal from the Criminal Court for Putnam County
No. 06-0969 Leon C. Burns, Jr., Judge

No. M2008-01876-CCA-R3-CD - Filed May 11, 2009

The Defendant, Patricia Ann Plaskett, was charged with driving under the influence, sixth offense, driving under the influence per se, driving on a revoked driver's license, and speeding. Following a jury trial, she was found guilty as charged. In this direct appeal, she argues that the trial court erred in failing to dismiss the charges against her because her indictment was not signed by the district attorney general as is required, she argues, by law. After our review, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

J. Robin McKinney, Nashville, Tennessee, for the appellant, Patricia Ann Plasket.

Robert E. Cooper, Jr., Attorney General and Reporter; Melissa Roberge, Assistant Attorney General; William E. Gibson, District Attorney General; and Marty S. Savage, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

Following a February 12, 2007 traffic stop, the Defendant was indicted on one count of driving under the influence, sixth offense, driving under the influence per se, driving on a revoked driver's license, and speeding. The indictments were signed by Marty S. Savage, an assistant district attorney general. On this basis, the Defendant moved to dismiss the charges against her after jury selection had taken place. The trial court denied her motion because "the district attorney himself does not have to sign the indictment." Following a jury trial, the Defendant was found guilty as charged. She now appeals, arguing only that the trial court erred by not dismissing the indictments.

Analysis

The sufficiency of an indictment is a question of law that we review de novo. State v. Hill, 954 S.W. 2d 725, 727 (Tenn. 1997). The State first argues, relying on Tennessee Rule of Criminal Procedure 12(b)(2), that the Defendant has waived any argument that her indictment was flawed because she did not object to it before the trial. The Defendant contends, however, that the alleged defect in the indictment deprived the court of jurisdiction to convict her. As such, we will review this issue on its merits.

The Defendant argues that her indictment is invalid because it was signed by an assistant district attorney general rather than by the district attorney general. The Defendant relies on Tennessee Code Annotated section 40-13-103 which states, "No district attorney general shall prefer a bill of indictment to the grand jury without a prosecutor marked on the bill or indictment, unless otherwise expressly provided by law." This statute, by its terms, does not require the district attorney general to personally sign an indictment.

In State v. Taylor, 653 S.W.2d 757, 759-60 (Tenn. Crim. App. 1983), this Court examined Tennessee cases which lend support to the Defendant's argument. However, this Court held that

> the Constitution does not restrain the legislature in any sense from the enactment of laws prescribing or affecting the duties performed by, or imposing restraints upon, the [d]istrict [a]ttorneys [g]eneral in the State, in the procedure for the preparation of indictments or presentments. Nor, is there any statutory restriction. In [Tennessee Code Annotated section] 8-7-101 et seq., prescribing the duties of the [d]istrict [a]ttorney [g]eneral, there is no requirement or mandate that the [d]istrict [a]ttorney [g]eneral must personally perform any of the duties relegated to him by the Constitution or the Legislature. To the contrary, by implication and directly, the statutes carry the connotation that an [a]ssistant [d]istrict [a]ttorney [g]eneral may act in the stead of the [a]ttorney [g]eneral in whatever capacity he is called upon to serve.

Taylor, 653 S.W.2d at 760.

In our view, this Court's opinion in Taylor is dispositive of this appeal. We hold that an indictment signed by an assistant district attorney general, rather than the district attorney general, is a valid indictment. Accordingly, we conclude that this issue has no merit.

Conclusion

Based on the foregoing authorities and reasoning, we affirm the judgment of the trial court.

_____

DAVID H. WELLES, JUDGE